



# ARCHER, BYINGTON, GLENNON & LEVINE LLP.

ROBERT M. ARCHER\*  
JOHN H. BYINGTON III  
MARTY GLENNON  
JULES B. LEVINE (1932-2012)  
GARY A. THAYER  
JAMES W. VERSOCKI

534 BROADHOLLOW ROAD, SUITE 430  
MELVILLE, NY 11747

PHONE: (631) 249-6565  
FACSIMILE: (631) 777-6906

WWW.ABGLLAW.COM

May 20, 2024

\* Partner emeritus-retired

## Via ECF

Honorable Paul A. Engelmayer  
United States District Court  
Southern District of New York  
Thurgood Marshall United States Courthouse  
40 Foley Square  
New York, NY 10007

**Re: Kirkpatrick Dunbar v. St. Gerard, LLC., et al**  
**Case No.; 22-cv-10453 (PAE)(BCM)**  
**Opposition to Motion to Default**

Dear Judge Engelmayer:

This firm was recently retained by St. Gerald LLC to appear in this matter; a notice of appearance was filed by this firm (Docket Entry No. 95) on May 20, 2024.

Pursuant to Your Honor's order dated May 7, 2024, St. Gerald LLC was provided until May 21, 2024, to file opposition to the proposed default judgment filed against it by plaintiff (Docket Entry No. 91).

We have been in communication with counsel for both plaintiff and co-defendant 199 East 3rd Street LLC to review the procedural status of this matter and to discuss potential resolution of plaintiff's claims. Based on those discussions, plaintiff has consented to withdrawing its proposed default judgment so the parties can further discuss resolution of this matter and allow St. Gerard LLC the opportunity to file responsive pleadings, with the consent of the Court.

St. Gerard LLC believes that allowing plaintiff to withdraw the proposed default motion would be appropriate as it would allow the parties to address plaintiff's claims for access under the Americans with Disabilities Act and would not cause any prejudice to the non-defaulting parties, especially since plaintiff is consenting to the withdrawal of its motion. Furthermore, 199 East 3rd Street LLC is the landlord to St. Gerard LLC and a default judgment would preclude the ability of St. Gerald LLC and 199 East 3rd Street LLC to coordinate potential remedies to any alleged access issues raised by plaintiff and determine which of the defendants are responsible for such remedial measures.

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St. Gerard LLC also submits that it has defenses to the claims set forth in the Amended Complaint, including factual disputes as to certain allegations raised by the plaintiff and potential cross-claims against 199 East 3rd Street LLC relating to the apportionment of liability, if any, in this action. Furthermore, St. Gerard LLC's non-responsiveness was not willful. St Gerard LLC has advised the undersigned that the amended complaint was served on an employee of the company with limited English skills. Once the paperwork was reviewed by an appropriate decision-maker at the company, it was sent to counsel and this firm immediately contacted Mr. Marks, counsel for plaintiff, to discuss the procedural status of the matter. Shortly thereafter, counsel for both plaintiff and co-defendant 199 East 3rd Street LLC held a call to discuss this motion, the procedural status of the case, and reached the agreement to allow St. Gerard, LLC. to request that the proposed default judgment be withdrawn or vacated on consent.

For the reasons set forth herein, St. Gerard LLC respectfully requests that plaintiff be granted permission to withdraw its proposed default motion or, in the alternative, that the Court deny the proposed default judgment, and that St. Gerald LLC be afforded the opportunity to appear and file responsive pleadings in this action.

Thank you for your courtesies in this matter and your consideration of this application.

Respectfully submitted,

*/s/ James W. Versocki*

James W. Versocki

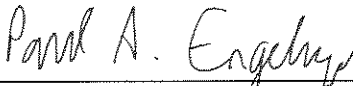
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GRANTED. Plaintiff's motion for default judgment, Dkt. 89, is hereby withdrawn. The Court respectfully directs the Clerk of Court to terminate the motion pending at Docket 89. This case remains under the able pretrial management of Judge Moses.

SO ORDERED.

Dated: May 21, 2024  
New York, New York  
785587

  
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PAUL A. ENGELMAYER  
United States District Judge